



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable L. W. Pollard
County Attorney
Kerr County
Kerrville, Texas

Dear Sir:

Opinion No. 6-5885

Re: Whether game warden is an
executive officer under
Article 429, Penal Code.

We have your inquiry.

"Will you please advise me whether or not a
Game Warden is an officer within the meaning of
Article 429, of the Penal Code of the State of
Texas."

Article 429, Penal Code, prohibiting false personations of certain officers, reads in part as follows:

"Whoever falsely assumes or pretends to be a
Judicial or Executive Officer of this state . . .
shall be guilty of a misdemeanor. . . ."

A game warden is an executive officer of this State.
An examination of the statutes creating the office and defining his powers and duties makes clear his status as such under the reasoning of the authorities.

The Court of Criminal Appeals, in holding a city policeman to be a public officer under the State, and therefore an executive officer of the State, pointed out that the controlling test is whether the "officer is one who receives his authority under the laws of the state, and performs some of the governmental functions of the state." The court attached much significance to the point that the office was "created by statute, and such an officer has and can exercise only such power as he is authorized to do by the Legislature. See Ex parte Preston, 161 S. W. 115.

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A careful analysis of that case and the application of its doctrine to Title 67, R. C. S., and to Articles 871-978L, Penal Code, clothing the Game, Fish and Oyster Commission, and through it, the game wardens of Texas with broad and important governmental law enforcement functions, leads us to conclude that it is a misdemeanor under the statute to falsely personate a game warden.

Very truly yours

ATTORNEY GENERAL OF TEXAS

SEPTEMBER 4, 1944

Ernest D. Bell

ATTORNEY GENERAL OF TEXAS

By

Elbert Hooper

Elbert Hooper
Assistant

KH:db

